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MEDIA, INC., and JOSE DAVID HERNANDEZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

Case No.:

1:20-cv-00988-DAD-BAM

**REPLY DECLARATION OF
SETH L. BERMAN IN SUPPORT
OF PLAINTIFF AND
COUNTERDEFENDANTS'
MOTION TO DISMISS
DEFENDANT'S FIRST
AMENDED COUNTERCLAIMS**

Judge: Hon. Dale A. Drozd

Date: November 3, 2020

Time: 9:30 a.m.

Courtroom: Courtroom 5, 7th floor

HYPHY MUSIC, INC.,

Counterclaimant,

v.

YELLOWCAKE, INC.; COLONIZE
MEDIA, INC.; JOSE DAVID
HERNANDEZ; and JESUS CHAVEZ SR,

Counterdefendants.

SETH L. BERMAN, declares as follows:

1. I am a partner in the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP and I am admitted *pro hac vice* in connection with this matter to practice before this Court. (ECF 18). I am counsel of record for Plaintiff Yellowcake, Inc. (“Yellowcake” or “Plaintiff”), Counterdefendant Colonize Media, Inc., (“Colonize”) and Counterdefendant Jose David Hernandez (“Hernandez”), and as such, I have personal knowledge of the facts and circumstances in this matter.

2. This Reply Declaration is being submitted in further support of Yellowcake, Colonize and Hernandez’s Motion to Dismiss Defendant/Counterclaimant Hyphy Music, Inc.’s (“Hyphy” or “Defendant/Counterclaimant”) First Amended Counterclaims (ECF 15), numbered 1, 3, 4, 5, 6, and 7, asserted against Yellowcake, Colonize and Hernandez.

3. This Reply Declaration is based upon my personal knowledge obtained as attorney for Yellowcake, Colonize and Hernandez, as well as the Exhibits annexed hereto, the accompanying Reply Memorandum of Points and Authorities, and all prior pleadings and proceedings had herein.

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FACTS & EXHIBITS

4. For the sake of brevity and judicial economy, the undersigned restates the Statement of Facts as set forth in Yellowcake, Colonize and Hernandez's initial Memorandum of Points and Authorities and accompanying Reply Memorandum of Points and Authorities and incorporates them as if fully set forth herein.

5. Attached hereto as Exhibits are true and correct copies of the documents referenced in the Reply Memorandum of Points and Authorities submitted herewith, and attached to the Request for Judicial Notice of the same, also submitted herewith.

6. Attached hereto as **Exhibit "A"** is a copy of the U.S. Copyright Office's Online Catalog information for Defendant/Counterclaimant Hyphy's Sound Recording Registration No. SR 0000869114 (also identified in Exhibit "B" to First Amended Counterclaims (ECF 15)).

7. Attached hereto as **Exhibit "B"** is a copy of the U.S. Copyright Office's Online Catalog information for Defendant/Counterclaimant Hyphy's Sound Recording Registration No. SR 0000876925 (also identified in Exhibit "B" to First Amended Counterclaims (ECF 15)).

8. Attached hereto as **Exhibit "C"** is a copy of the U.S. Copyright Office's Online Catalog information for Defendant/Counterclaimant Hyphy's Sound Recording Registration No. SR 0000820139 (also identified in Exhibit "B" to First Amended Counterclaims (ECF 15)).

9. Attached hereto as **Exhibit "D"** is a copy of the U.S. Copyright Office's Online Catalog information for Defendant/Counterclaimant Hyphy's Sound Recording Registration No. SR 0000810777 (also identified in Exhibit "B" to First Amended Counterclaims (ECF 15)).

10. Attached hereto as **Exhibit "E"** is a copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Sound Recording Registration No. SR 0000863319 (also identified in Exhibit "A" to Complaint (ECF 1)).

11. Attached hereto as **Exhibit “F”** is a copy of the U.S. Copyright Office’s Online Catalog information for Plaintiff/Counterdefendant Yellowcake’s Sound Recording Registration No. SR 0000864336 (also identified in Exhibit “A” to Complaint (ECF 1)).

12. Attached hereto as **Exhibit “G”** is a copy of the U.S. Copyright Office’s Online Catalog information for Plaintiff/Counterdefendant Yellowcake’s Sound Recording Registration No. SR 0000866471 (also identified in Exhibit “A” to Complaint (ECF 1)).

13. Attached hereto as **Exhibit “H”** is a copy of the U.S. Copyright Office’s Online Catalog information for Plaintiff/Counterdefendant Yellowcake’s Sound Recording Registration No. SR 0000863321 (also identified in Exhibit “A” to Complaint (ECF 1)).

14. **WHEREFORE**, the undersigned respectfully requests that this Court grant Plaintiff/Counterdefendant Yellowcake, Colonize and Hernandez’s Motion to Dismiss Defendant/Counterclaimant Hyphy’s First Amended Counterclaims numbered 1, 3, 4, 5, 6, and 7, together with such other and further relief as this Court deems just and proper.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: October 27, 2020

Respectfully submitted,

**ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP**

By: /s/ Seth L. Berman
Seth L. Berman, Esq. (*admitted pro hac vice*)
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Jose David Hernandez***